Filed 6/30/15 H.T. v. Superior Court CA1/4

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| H.T.,<br>Petitioner,<br>v.<br>THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,<br>Respondent;<br>SAN FRANCISCO HUMAN SERVICES AGENCY,<br>Real Party in Interest. | A144922<br><br>(City & County of San Francisco Super. Ct. No. JD 14-3364) |

In this juvenile writ proceeding, H.T. seeks extraordinary relief from the juvenile court order denying him reunification services with respect to his infant daughter, R.T. (born October 2014), and setting a permanency planning hearing pursuant to section 366.26 of the Welfare and Institutions Code.[1] Specifically, H.T. claims that the juvenile court erred in concluding that he was not entitled to reunification services as a presumed father under the rationale of *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*). H.T. also asserts that—even if he has not established his status as a *Kelsey S.* father—the juvenile court should have ordered reunification services to him as a mere biological father under section 361.5, subdivision (a), because such services would benefit R.T.

[1] All statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

Seeing no error requiring reversal of the juvenile court's setting order, however, we deny the petition.

## I. BACKGROUND

On October 27, 2014, the San Francisco Human Services Agency (Agency) filed a dependency petition with respect to newborn R.T. after her mother, Ra.P. (mother), tested positive for methamphetamine while giving birth to the minor by emergency Cesarean section. During delivery, mother experienced a seizure and went into cardiac arrest. She had reportedly not obtained consistent prenatal care. R.T. was born prematurely (between 32 and 36 weeks of gestation) and with no pulse after what was described as a traumatic birth. She had no heart rate for 12 minutes after her birth, was intubated, and was thereafter transported to another hospital for a special hypothermia/cooling treatment to prevent further damage to her body.

The petition alleged that mother had a substance abuse problem and mental health issues that required assessment and treatment. She had tested positive for marijuana at the birth of her older child, D.M., the previous year and had also confirmed substantial alcohol use during that pregnancy. D.M. was removed from mother's care shortly after his premature birth (at 28 weeks of gestation) and—after mother failed to reunify—was in the process of being adopted.

With respect to H.T., who at that point was the minor's alleged father, the petition claimed that he had a substance abuse problem in need of assessment and treatment in that his criminal record included drug-related offenses. In addition, the petition disclosed a recent incident of domestic violence between H.T. and Ra.P. Specifically, H.T. was arrested on July 21, 2014, on domestic violence charges after he grabbed Ra.P. (who was five months pregnant) by both arms and threw her to the ground. Ra.P. was transported to a safe house and granted an emergency protective order, but stated that she had been visiting and residing with H.T. since that time. Although he was on parole for a prior conviction at the time of his July 2014 domestic violence arrest, H.T. denied ever having been arrested. Both parents denied domestic violence and denied having substance abuse problems.

As described in the Agency's detention report, mother indicated that she had been living mostly in Fresno during her pregnancy, but had been visiting H.T. at the time of the minor's birth and intended to stay in San Francisco with him. According to mother, she was "bouncing" between doctors in San Francisco and Fresno for prenatal care, but there were no records and it was unknown whether she had received any prenatal care at all. When asked about her drug use, mother claimed that she had just tried it once to see what it was like.

H.T. had been visiting the baby at the hospital. He denied knowing that mother used methamphetamine during her pregnancy. On October 23, 2014, the social worker called H.T. to set up a meeting to see his home. H.T. said he was busy that day, so the social worker asked him to call back and schedule an appointment. H.T. did not call back, however, and, when the social worker attempted to contact him, he did not pick up the phone. Since his voicemail was full, she could not leave a message. Mother did not know where he was and had not seen or heard from him for a few days.

At the detention hearing on October 28, 2014, both parents appeared and were appointed counsel. H.T. filed a form Statement Regarding Parentage, indicating that he believed he was R.T.'s father and requesting a judgment of parentage. The juvenile court detained the minor, requested paternity testing, and ordered supervised visitation for both parents.

Over the next four months, the Agency filed a number of dispositional reports and addendums supporting its consistent recommendation that mother be bypassed for reunification services due to her prior child welfare history and that H.T. not be offered services because he was not a presumed father and had a history of violent crime and multiple incarcerations. In the Agency's dispositional report dated December 2, 2014, the social worker stated that H.T. had failed to return any of her phone calls and that, per the San Francisco Sheriff's Department, he was currently incarcerated in San Bruno. The social worker reiterated that H.T. had a long criminal history, including arrests for the possession and sale of controlled substances. Moreover, mother disclosed that she and H.T. were involved in another incident of domestic violence on November 11, 2014, in

which H.T. took money from her and physically assaulted her. When mother called the police to report the incident, H.T. was picked up on an outstanding warrant, which led to his incarceration. H.T. was reportedly housed in a jail pod for inmates involved in violent crimes.

When interviewed again about her drug use, Ra.P. changed her story and reported that she had been abusing methamphetamine for approximately 6 months. She did not seem to be able to process the seriousness of the situation with respect to R.T, who almost died during birth and was at high risk for developmental diagnoses such as cerebral palsy. Rather, her focus was on doing whatever was necessary to get H.T. out of jail. She mentioned to one caseworker that she needed a job to get H.T. out of jail and that maybe she should strip. There were concerns that she was prostituting herself. Neither parent appeared at the December 2, 2014, hearing, and the matter was continued to January 20, 2015, for receipt of the paternity test results and for further proceedings with respect to jurisdiction and disposition.

The social worker met with H.T. at the jail on December 4, 2014. During this interview, he denied having any children other than R.T., despite the fact that he had a prior substantiated referral from 2003 with respect to a daughter. According to H.T., he had taken a paternity test, and this child was not his. In addition, H.T. continued to claim that he knew nothing about Ra.P.'s substance abuse. However, he also reported that he had told mother on many occasions to stop using. The Agency remained concerned that mother was using her general assistance monies to purchase illegal substances and alcohol and that, when her money ran out, she was prostituting herself in order to stay in hotels near the San Bruno jail and to supply money to H.T. in jail.

Thereafter, the social worker met with both mother and H.T. on January 5, 2015. H.T. had been released from jail on December 31, 2014, but had two upcoming court dates in January. Mother asserted that she had not used since H.T. got out of jail, and H.T. claimed to have been " 'keeping her clean.' " However, when confronted due to a heavy smell, H.T. admitted that he, himself, had smoked marijuana immediately prior to the meeting. Moreover, mother was not being physically cared for, as she presented at

the meeting with a very swollen and extended stomach, including a large stitch (from her prior hospitalization) sticking out of her belly "like a bad splinter." The social worker made arrangements for mother to be seen at urgent care.

Further, when pressed on January 5 regarding how she was supporting herself, mother admitted to doing " 'a little bit of prostituting.' " In fact, given the amount of information that H.T. possessed regarding the tricks mother was turning, it appeared to the social worker that he had been pimping her from jail. H.T. responded that he could not tell mother what to do, "even if it is illegal and it benefitted him." By the social worker's observation, however, it appeared that, in fact, H.T. had a great deal of control over Ra.P. and that the two had a relationship more characteristic of a child and a parent. Moreover, the social worker experienced H.T. as very manipulative. Indeed, during the meeting, mother retracted the claims of domestic violence that resulted in H.T.'s July 2014 arrest, with the social worker noting that it was "obvious" that she had been coached by H.T.

Two days later, on January 7, 2015, mother was arrested after calling the social worker, crying and screaming and asking for the worker to come get her. Mother also called the police claiming domestic violence. When the social worker and the police ultimately tracked mother down, she was with H.T. and was visibly under the influence. Mother admitted that she was using methamphetamine and also admitted to prostituting herself the previous night. She denied, however, that H.T. had assaulted her. When asked why she had called the social worker and the police, mother responded: " '[B]ecause he said he was going to leave me and if he is in jail, he can't leave me because he will need me to make money for him.' " Although the social worker wanted to take mother to a detox program, the police had to arrest her after discovering that she had outstanding warrants for prostitution and a stolen vehicle charge in two other counties. Since she had marijuana on her person, she was also charged with possession. Later that day, H.T. told the social worker that he and Ra.P. had been sleeping in his car as his mother was being evicted and he had nowhere to stay. It was the social worker's

opinion that neither Ra.P. nor H.T. had the mental capacity, parenting skills, or stable housing necessary to parent a child.

On January 20, 2015, the parents again failed to appear in court and the matter was continued to February 11, 2015. Later that day, the social worker received a call from H.T., who was "very irate and upset" and stated: "I missed [R.T.'s] court date, but I got a lot of shit on my head and going to her court date is not a priority." H.T. further stated that things had changed for him and that he was struggling, with nowhere to sleep, "riding on the train or buses and not having anywhere to shower." The social worker mentioned both his mother and maternal grandmother as possible supports for him as he had indicated in the past that he could stay with either if given custody of R.T. H.T., however, now claimed that his maternal grandmother lived in a one-bedroom apartment and that he could not stay with her. And, as previously mentioned, his mother was in the process of being evicted.

On January 27, 2015, H.T. contacted the social worker, stating that he had no idea of mother's whereabouts and wondering whether he could visit R.T. without her. The social worker explained that visitation had been cancelled because of persistent failure to attend, but that she would submit a new referral. She indicated that she would let H.T. know when a date and time was scheduled.

With respect to paternity testing, R.T. was taken for the necessary testing on January 28. Reportedly, H.T. had told his case worker in the jail that the Agency was forcing him to take a paternity test. In contrast, he told another jail employee that he wanted a paternity test because he didn't believe that the baby was his. However, when asked by the social worker if he had actually taken his paternity test while in jail as he was scheduled to do, H.T. said no and "did not respond" as to why. H.T. ultimately completed the paternity testing on February 4, 2015. Both parents were again absent at the February 11, 2015, court hearing. The matter was continued to March 5.

At the hearing on March 5, 2015, the Agency reported the results of H.T.'s paternity test, showing him to be the biological father of R.T. Neither H.T. nor mother was present for this hearing. Mother's whereabouts remained unknown. H.T.'s attorney

reported that she had spoken to him about the paternity test results and the court date and that he had indicated that he planned on attending the hearing. She had been unable to get in contact with him on the actual date of the hearing, however, because his telephone number was not working. On this basis, the court proceeded with jurisdiction in the parents' absence. It refused a request by H.T.'s attorney for a contested hearing because H.T. lacked standing, not having qualified as a presumed father. Instead, after making a slight amendment to the petition on its own motion, the juvenile court found R.T. to be a minor described by subdivisions (b) and (j) of section 300. The court also changed H.T.'s status from alleged father to biological father. The matter was continued to April 14, 2015, for disposition and so that a search for mother could be undertaken.[2]

On April 3, 2015, H.T. filed a motion seeking to elevate his status to that of a presumed father. Specifically, H.T. argued that he was a statutorily presumed father because he is a biological father that visited as much as he was allowed. In addition, H.T. argued that he met the criteria for being a *Kelsey S.* father because he had "promptly attempted to fulfill his parental responsibilities but [had] been unable to establish his presumed father status through no fault of his own." In support of his motion, H.T. filed a declaration in which he stated the following: that he was in a relationship with mother before her pregnancy, was with her during part of the pregnancy, and did his best to make sure she didn't use any drugs; that he was present at R.T.'s birth and visited with the minor in the hospital; that he was not given an opportunity to sign the birth certificate at the hospital, but that mother informed hospital staff that he was the father; that he cooperated with the Agency to get a paternity test and that any delay in scheduling that test was not his fault; that he was told he could not visit R.T. without mother, once mother stopped visiting; and that he called the social worker "at least 10 times" asking for visits but was told he could not visit until his biological paternity was established.

[2] A search was subsequently conducted for mother, but her whereabouts remained unknown. As a part of this search, the maternal grandmother was contacted and gave a phone number for mother. Although a message was left for mother at this designated number, she did not return the call.

In response to H.T.'s motion, the Agency filed an addendum report in advance of the April 14 hearing in which it disclosed that H.T. had been incarcerated again on March 9, 2015, this time after an arrest on multiple counts of burglary and buying/selling stolen property. With respect to visitation, the social worker reported that— after R.T. was released from the hospital into foster care—H.T. had attended one supervised visit with mother on January 13, 2015, after which there was no further contact from either parent. When H.T. called the social worker in late January to request visits, she generated a February 6 referral to re-start visitation through an organization called OMI. On February 11, she called the OMI case manger, Mr. Ali, to let him know that H.T.'s phone was disconnected, but that she would keep trying to contact him. The social worker was able to leave a message for H.T. on February 13 asking for a call back regarding visitation. Also on that date, she let Mr. Ali know that H.T.'s phone was working. Mr. Ali then called H.T., who told him he would call him back because he was driving. H.T., however, never returned the call, and, when Mr. Ali tried to re-establish contact, H.T.'s phone had again been disconnected. When the social worker spoke to H.T. on February 17, he claimed never to have spoken to Mr. Ali, stating " 'oh, that was him?' " when the social worker reminded him of the prior call. Although the social worker gave H.T. Mr. Ali's contact information, she had most recently heard from Mr. Ali that he would be closing the referral because H.T. had never made contact.

The hearing on H.T.'s motion for presumed father status was combined with the dispositional hearing in this matter and the two were heard together on April 14, 2015. H.T. was present at this hearing in custody and, with respect to visitation, reported through his attorney that he had, in fact, made contact with Mr. Ali after leaving him numerous messages while Mr. Ali was on vacation. According to H.T., a visit was being scheduled for March 13, 2015, but never occurred because he was taken into custody on March 9. H.T.'s attorney also reported that H.T. had successfully completed a parenting class and was participating in a Man Overcoming Violence Program while incarcerated. She argued that H.T. met the criteria for a *Kelsey S.* father. The juvenile court, however,

concluded that H.T. had not established an entitlement to presumed father status at that point and denied the motion.

With respect to disposition, the juvenile court bypassed mother for reunification services pursuant to subdivisions (b)(10) and (b)(11) of section 361.5 based on the prior termination of her parental rights with respect to her older child, D.M. After hearing a statement from H.T. in which he acknowledged his mistakes and indicated his strong desire to parent the minor, the court declined to grant discretionary reunification services to H.T. under section 361.5, subdivision (a). The matter was therefore set for a hearing pursuant to section 366.26 so that a permanent plan for out-of-home care could be established for R.T.

H.T. subsequently filed a timely notice of his intent to file a writ petition, and the petition itself was filed on May 6, 2015. (Rules 8.450(e), 8.452.)

## II. DENIAL OF REUNIFICATION SERVICES

### A. *Statutory Framework and Standard of Review*

In general, the dependency laws recognize three different types of fathers: presumed, alleged, and biological. (*In re Zacharia D*. (1993) 6 Cal.4th 435, 449, fn. 15.) "An alleged father is a man who may be the father of the child but who has not established biological paternity or presumed father status." (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1209 (*T.R.*).) "A biological father is one whose paternity of the child has been established, but who has not established that he qualifies as the child's presumed father." (*Ibid.*) Finally, a presumed father is one who meets one or more of the criteria specified in Family Code section 7611 (section 7611), which sets forth a number of rebuttable presumptions of paternity, mostly concerned with various forms of marriage or attempted marriage to the child's mother. (*T.R.*, *supra*, 132 Cal.App.4th at p. 1209; see § 7611, subds. (a)-(c).) The purpose of section 7611 " 'is to distinguish between those fathers who have entered into some familial relationship with the mother and child and those who have not.' " (*T.R.*, *supra*, 132 Cal.App.4th at p. 1209.)

"A father's status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is

entitled." (*T.R., supra*, 132 Cal.App.4th at p. 1209.) For instance, as is relevant here, when a child is removed from parental custody under the dependency laws, the juvenile court is *required* to provide reunification services to "the child and the child's mother and statutorily presumed father." (§ 361.5, subd. (a).) In contrast, the juvenile court "may order services for the child and the biological father, if the court determines that the services will benefit the child." (*Ibid.*) In sum, presumed father status "ranks highest" overall under the dependency laws and "entitles the father to appointed counsel, custody (absent a finding of detriment), and a reunification plan." (*T.R., supra*, 132 Cal.App.4th at p. 1209.)

A father who has not married or attempted to marry a child's mother may still be declared a presumed father of that child pursuant to subdivision (d) of section 7611 if he "receives the child into his . . . home and openly holds out the child as his . . . natural child." (§ 7611, subd. (d).) In addition, under certain narrow circumstances, our Supreme Court has acknowledged a constitutional right to presumed father status for unwed fathers, even when they do not qualify under the express language of section 7611, subdivision (d). (*Kelsey S., supra*, 1 Cal.4th at pp. 844-850.) Commonly known as a "*Kelsey S.*" father, such an individual is "an unwed biological father who comes forward at the first opportunity to assert his paternal rights after learning of his child's existence, but has been prevented from becoming a statutorily presumed father under section 7611 by the unilateral conduct of the child's mother or a third party's interference." (*In re M.C.* (2011) 195 Cal.App.4th 197, 212-213 (*M.C.*).) Under these circumstances, " 'a father asserting valid *Kelsey S.* rights may effectively qualify for presumed father status as the result of his constitutional right to parent, which overrides any contrary statutory direction.' " (*M.C., supra*, 195 Cal.App.4th at p. 220.)

In deciding whether an unwed father is entitled to *Kelsey S.* status, "[a] court should consider all factors relevant to that determination. The father's conduct both *before and after* the child's birth must be considered. Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and the circumstances permit.

In particular, the father must demonstrate 'a willingness himself to assume full custody of the child—not merely to block adoption by others.' [Citation.] A court should also consider the father's public acknowledgment of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child." (*Kelsey S., supra,* 1 Cal.4th at p. 849, fn. omitted.) Moreover—H.T.'s assertions to the contrary notwithstanding—in making this determination, the juvenile court should take into account the father's conduct throughout the period since he learned he was a father, including during the pendency of the corresponding legal proceedings.[3] (*Id.* at p. 850.)

In sum, an unwed father must come forward "promptly" and demonstrate "a full commitment to his parental responsibilities—emotional, financial, and otherwise." (*Kelsey S., supra,* 1 Cal.4th at pp. 849-850.) *Kelsey S.* and its progeny do not suggest, however, that an unwed father is "required to love or dote on the mother, propose marriage to her, or be a compatible mate to qualify as a fully committed parent. All that is required is that he provide care and support for the mother's physical and emotional health to the extent it affects the health and welfare of the child she is carrying." (*Adoption of Baby Boy W.* (2014) 232 Cal.App.4th 438, 452, fn. 13 (*Baby Boy W.*); see *Adoption of Emilio G.* (2015) 235 Cal.App.4th 1133, 1145 (*Emilio G.*).) Moreover, the law does not require an unwed father to "do everything he possibly can." (*M.C., supra,* 195 Cal.App.4th at p. 221.) Rather, he must only " 'attempt to assume his parental responsibilities as fully *as the mother will allow and his circumstances permit*.' " (*Ibid.*)

"The burden is on a biological father who asserts *Kelsey S.* rights to establish the factual predicate for those rights." (*Adoption of O.M.* (2008) 169 Cal.App.4th 672, 679 (*O.M.*).) We review the juvenile court's implied factual findings here with respect to whether H.T. met this burden for substantial evidence. (See *id.* at pp. 679-680.) Under

[3] H.T. cites *In re J.O.* (2009) 178 Cal.App.4th 139, 149-151, for the proposition that, once a *Kelsey S.* father makes a sufficient showing, his parental rights are constitutionally protected and his subsequent actions are irrelevant. This case is obviously distinguishable as it involves the statutory right to presumed status under section 7611, subdivision (d), rather than the establishment of *Kelsey S.* rights.

the substantial evidence test, " '[w]e do not evaluate the credibility of witnesses, attempt to resolve conflicts in the evidence or determine the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the . . . court's order and affirm the order even if there is other evidence supporting a contrary finding.' " (*Baby Boy W., supra*, 232 Cal.App.4th at pp. 452-453.) In addition, to the extent the establishment of *Kelsey S.* rights presents a mixed question of law and fact, "we exercise our independent judgment in measuring the facts against the applicable legal standard." (*O.M., supra,* 169 Cal.App.4th at p. 680; see *In re D.S.* (2014) 230 Cal.App.4th 1238, 1245.)

In contrast, "[t]he juvenile court has discretion to offer a mere biological father reunification services based on a finding it would benefit the child." (See § 361.5, subd. (a); *In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1026.) Indeed, the juvenile court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Thus, we review the juvenile court's decision to deny reunification services to H.T. as a biological father for abuse of discretion. (See *In re Elijah V.* (2005) 127 Cal.App.4th 576, 589.)

**B. *The Juvenile Court's Parentage Determination***

Our review of the record in this case leads to the inescapable conclusion that the juvenile court did not err in concluding that H.T. failed to met the requirements for *Kelsey S.* status. Although mother lived with H.T. off and on during her pregnancy, there is no evidence that he was involved in, or encouraged her to pursue, any prenatal care, this despite evidence that he had a "great deal of control" over mother. Further, although he claimed that he repeatedly counseled mother to stop using drugs, she was residing with him and actively using methamphetamine at the time of the minor's traumatic birth. Moreover, not only was H.T. not emotionally supportive of mother during and after her pregnancy, his actions were actually harmful, as he engaged in multiple incidents of domestic violence with her. (Cf. *Emilio G., supra,* 235 Cal.App.4th at p. 1145.) Finally,

far from providing financial support to mother, she was prostituting herself and considering stripping to provide *him* with funds.

In addition, once R.T. was removed by the Agency, H.T. was inconsistent in maintaining contact with the social worker and never followed up with her so that she could assess his living situation. Ultimately, he became homeless and was not in any position to take custody of R.T. Moreover, he missed multiple court appearances, noting on one occasion: "I missed [R.T.'s] court date, but I got a lot of shit on my head and going to her court date is not a priority." And, although there was conflicting evidence regarding H.T.'s attempts to maintain consistent visitation with R.T., substantial evidence supports the conclusion that he failed to consistently take advantage of the court ordered supervised visitation that was available to him, visiting with the minor only one time after her release from the hospital. Such behavior simply cannot be squared with the requirement that a "biological father must establish an 'unequivocal commitment to his parental responsibilities' both before and after the child's birth" in order to be deemed a *Kelsey S.* father. (*Emilio G.*, *supra*¸ 235 Cal.App.4th at p. 1147.)

Finally and fundamentally, H.T. made himself unavailable to fully assert his parental responsibilities with respect to R.T. by becoming incarcerated on three separate occasions after learning he was to become a father. Under similar circumstances, this court has previously concluded that "the rationale underlying the *Kelsey S.* requirements, and particularly the need for timely provision to unwed mothers of 'emotional, financial, medical, or other assistance during pregnancy' [citation], militates against affording *Kelsey S.* rights to a biological father who has precluded himself from even attempting to provide such support, through his own voluntary involvement in criminal behavior." (*O.M.*, *supra*, 169 Cal.App.4th at p. 681.) Indeed, as we have previously opined, "[w]e do not discern any violation of equal protection or due process in holding an unwed father's own criminal activity against him when assessing whether he has met the criteria for *Kelsey S.* rights." (*Id.* at p. 680.)

Although we can envision a scenario where temporary unavailability due to incarceration might not fatally undermine an otherwise strong argument for *Kelsey S.*

status, this is not that case. Rather, here, H.T. was jailed the first time in July 2014 after he grabbed mother and pushed her down when she was five months pregnant. He was incarcerated a second time in November 2014, shortly after R.T.'s birth, when he took money from mother and physically assaulted her. Thereafter, he was again arrested in March 2015, mere days before his visitation with R.T. was scheduled to resume, because he chose to be involved in a burglary. It is hard to understand how any of these behaviors could be viewed as consistent with a full commitment by H.T. to his parental responsibilities. (Cf. *In re Charlotte D.* (2009) 45 Cal.4th 1140, 1149-1150 [a father's "irresponsibility as a parent" demonstrated by, among other things, persistently engaging in criminal behavior].)

Indeed, as our high court has acknowledged, an unwed father's constitutionally protected interest in his child " 'requires both a biological connection and full parental responsibility; he must both be a father and behave like one.' " (*Kelsey S.* , *supra*, 1 Cal.4th at p. 838.) Although we acknowledge H.T.'s strong desire to parent R.T., substantial evidence more than supports the juvenile court's conclusion in this case that H.T. has not sufficiently behaved like a father. Thus, the court's refusal to grant H.T. presumed father status under *Kelsey S.* was not improper.

**C. *Refusal to Order Discretionary Reunification Services***

As a final matter, H.T. argues that—even if he was not entitled to presumed father status as a *Kelsey S.* father—the juvenile court abused its discretion in refusing to grant him reunification services as a biological father because providing him with services would have benefitted R.T. As discussed above, subdivision (a) of section 361.5 does provide that the juvenile court "may order services for the child and the biological father, if the court determines that the services will benefit the child." (See § 361.5, subd. (a).) However, the only potential benefit that H.T. has identified in this case is the opportunity for R.T. to have a "meaningful relationship with her biological father" and ties to her

biological family.[4] This possibility will, of course, be present in every case. Here—given H.T.'s extensive criminal history, including his history of violence; his mistreatment of mother, both before and after the minor's birth; the lack of consistency in his attempts to establish his parental rights, including his failure to visit consistently with R.T.; his lack of stable housing or lifestyle; the social worker's opinion that he did not have the mental capacity necessary to parent a child; and his apparent inability to avoid repeated criminal conduct—we see no abuse of discretion in the juvenile court's decision to forego reunification efforts that were likely to prove fruitless, thereby speeding permanency for this medically compromised infant. (Cf. *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744 [reunification bypass provisions created for situations where provision of services "may be fruitless"]; superceded by statute on other grounds as stated in *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1457.)

[4] H.T. also argues that the court's decision will, against public policy, leave R.T. fatherless. However, H.T.'s parental rights will be terminated at the permanency planning hearing only if R.T. is deemed adoptable. (See § 366.26, subd. (c).) Thus, R.T. *will* end up with a father—either her biological father or an adoptive one. (See *Kelsey S.*, *supra*, 1 Cal.4th at pp. 828-829.)

## III. DISPOSITION

The petition is denied on the merits. (See § 366.26, subd. (l)(1)(C), (4)(B).) Because the permanency planning hearing in this matters is set for August 19, 2015, this opinion is final as to this court immediately. (Rules 8.452(i), 8.490(b)(2)(A).)

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REARDON, J.

We concur:

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RUVOLO, P. J.

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STREETER, J.